

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSHUA DAVID WILLIAMS,
Booking #16124778,

Plaintiff,

vs.
BONNIE DUMANIS, et al.,

Defendants.

Case No.: 3:16-cv-1303-WQH-NLS

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO PAY
FILING FEES REQUIRED
BY 28 U.S.C. § 1914(a)**

JOSHUA DAVID WILLIAMS (“Plaintiff”), currently detained at the San Diego Central Jail (SDCJ) and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (Doc. No. 1).

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$400. *See* 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to prepay the entire fee only if he is granted leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007) (“*Cervantes*”); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to proceed IFP remains obligated to pay the entire fee in

1 “increments” or “installments,” *Bruce v. Samuels*, __ U.S. __, 136 S. Ct. 627, 629 (2016);
 2 *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his
 3 action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281
 4 F.3d 844, 847 (9th Cir. 2002).

5 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment
 6 of fees to submit an *affidavit* that includes a statement of all assets possessed and which
 7 demonstrates an inability to pay. *See Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir.
 8 2015). In support of this affidavit, prisoners like Plaintiff must also submit a “certified copy
 9 of the trust fund account statement (or institutional equivalent) for . . . the 6-month period
 10 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v.*
 11 *King*, 398 F.3d 1113, 1119 (9th Cir. 2005). It is from the certified trust account statement
 12 that the Court assesses an initial payment of 20% of (a) the average monthly deposits in
 13 the account for the past six months, or (b) the average monthly balance in the account for
 14 the past six months, whichever is greater, unless he has no assets. *See* 28 U.S.C.
 15 § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner then
 16 collects subsequent payments, assessed at 20% of the preceding month’s income, in any
 17 month in which his account exceeds \$10, and forwards those payments to the Court until
 18 the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

19 Plaintiff did not pay the filing fee required to commence a civil action, nor has he
 20 filed a Motion to Proceed IFP, which includes *both* the affidavit required by 28 U.S.C.
 21 § 1915(a)(1) *and* the certified copies of his trust funds account statements as required by
 22 28 U.S.C. § 1915(a)(2). While Plaintiff has submitted a SDCJ “prison certificate” dated
 23 May 25, 2016 (Doc. No. 2), this certificate, by itself, is insufficient to comply with § 1915’s
 24 additional requirements. Therefore, Plaintiff’s case cannot yet proceed. *See* 28 U.S.C.
 25 § 1914(a); *Cervantes*, 493 F.3d at 1051.

26 **II. Screening Required by 28 U.S.C. § 1915(e)(2) and § 1915A**

27 In addition, the Court cautions Plaintiff that if he chooses to proceed further by either
 28 pre-paying the full \$400 civil filing fee, or submitting a properly supported Motion to

1 Proceed IFP, his Complaint will be screened before service upon any defendant and may
 2 be immediately dismissed pursuant to 28 U.S.C. § 1915A(b) or 28 U.S.C. § 1915(e)(2)(B)
 3 regardless of whether he pays the full filing fee up front, or is granted leave to proceed IFP
 4 and to pay it in monthly installments. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir.
 5 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court
 6 to sua sponte dismiss an in forma pauperis complaint that is frivolous, malicious, fails to
 7 state a claim, or seeks damages from defendants who are immune); *Rhodes v. Robinson*,
 8 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing similar screening required by 28 U.S.C.
 9 § 1915A of all complaints filed by prisoners “seeking redress from a governmental entity
 10 or officer or employee of a governmental entity.”).

11 The Court further cautions Plaintiff that if his Complaint is found frivolous or
 12 malicious, or if fails to state a claim, its dismissal pursuant to 28 U.S.C. § 1915(e)(2) and/or
 13 § 1915A(b) may later count as a third “strike” against him pursuant to 28 U.S.C. § 1915(g).
 14 *See Andrews*, 398 F.3d at 1116 n.1 (“Strikes are prior cases or appeals, brought while the
 15 plaintiff was a prisoner, which were dismissed on the ground that they were frivolous,
 16 malicious, or failed to state a claim.”) (internal quotations omitted). “Pursuant to § 1915(g),
 17 a prisoner with three strikes or more cannot proceed IFP” unless he is in “imminent danger
 18 of serious physical injury” at the time his complaint is filed. *Id.*; 28 U.S.C. § 1915(g); *see also Williams*, 775 F.3d at 1188 (citing *Cervantes*, 493 F.3d at 1053).¹

20

21 ¹ The Court takes judicial notice of at least two prior civil actions, filed by Plaintiff in the
 22 Southern District of California while he was incarcerated, that already qualify as “strikes”
 23 under § 1915(g). They are: *Williams v. Scripps Hospital, et al.*, S.D. Cal. Civil Case No.
 24 3:14-cv-01643-AJB-NLS (Feb. 5, 2015 Order Granting IFP and Dismissing Civil Action
 25 for Failing to State a Claim pursuant to 28 U.S.C. § 1915(e)(2)(b)(ii) and § 1915A(b)(1)
 26 (Doc. No. 24); and *Williams v. State of California, et al.*, S.D. Cal. Civil Case No. 3:14-
 27 cv-01816-GPC-PCL (Order Denying Motion to Proceed IFP and Dismissing Action as
 28 Frivolous pursuant to 28 U.S.C. § 1915A (Doc. No. 22). *See Bias v. Moynihan*, 508 F.3d
 1212, 1225 (9th Cir. 2007) (court “may take notice of proceedings in other courts, both
 within and without the federal judicial system, if those proceedings have a direct relation
 to matters at issue.”) (citation omitted).

1 **III. Conclusion and Order**

2 For the reason explained above, the Court:

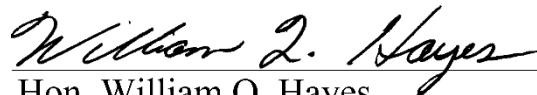
3 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the
4 \$400 civil filing and administrative fee or to submit a motion to proceed IFP pursuant to
5 28 U.S.C. §§ 1914(a) and 1915(a);

6 (2) **DENIES** Plaintiff's Request for Discovery (Doc. No. 4) without prejudice as
7 both premature and moot;

8 (3) **GRANTS** Plaintiff forty-five (45) days leave from the date of this Order to
9 re-open this case by: (a) prepaying the entire \$400 civil filing and administrative fee
10 required by 28 U.S.C. § 1914(a) in full; or (b) completing and filing a Motion to Proceed
11 IFP which includes *both* the affidavit and the certified copies of his trust account statement
12 for the 6-month period preceding the filing of his Complaint required by 28 U.S.C.
13 § 1915(a)(1), (2) and S.D. CAL. CIVLR 3.2(b).²

14 **IT IS SO ORDERED.**

15 Dated: August 10, 2016


Hon. William Q. Hayes

16
17 United States District Court

24
25 ² If Plaintiff fails to either prepay the \$400 civil filing fee or file a properly supported
26 Motion and Declaration in Support of his Motion to Proceed IFP, together with the trust
27 account statements required by 28 U.S.C. § 1915(a)(2) within 45 days, this case will remain
28 dismissed without prejudice based only on Plaintiff's failure to satisfy 28 U.S.C.
§ 1914(a)'s fee requirements, and may not be counted as a potential third "strike" against
him pursuant to 28 U.S.C. § 1915(g).